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The rule of law at the national and international levels

Review of the regulations to give effect to Article 102 of the Charter of the United Nations

Report of the Secretary-General

Summary

The present report, submitted pursuant to General Assembly resolution 71/148, provides a review of the regulations to give effect to Article 102 of the Charter of the United Nations, taking into account recent developments in the area of the registration and publication of treaties.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 71/148, in which the Assembly requested the Secretary-General to further elaborate on a review of the regulations to give effect to Article 102 of the Charter of the United Nations, taking into account recent developments. It expands on the proposals contained in the report of the Secretary-General on strengthening and coordinating United Nations rule of law activities (see A/71/169, para. 25).

2. The treaty-making practice in the international community and the practice relating to the implementation of Article 102 have changed considerably since the adoption of the regulations, in 1946. Technological developments have also profoundly transformed the registration and publication of treaties, rendering some provisions of the regulations out of date. In the present report, the Secretary-General therefore provides a review of the regulations to ensure that their text reflects current practice, and gives useful guidance to Member States on the fulfilment of their obligations under Article 102. The Secretary-General also discusses possible means of increasing the efficiency of the registration and publication process and enhancing the role played by the Treaty Section of the Office of Legal Affairs in supporting Member States in this area.

II. Historical background

3. The registration and publication of treaties have their origin in Article 18 of the Covenant of the League of Nations, which provided for the registration with and publication by the Secretariat of any treaty or international engagement entered into by the Members of the League. This obligation was introduced in order to promote public awareness of and interest in treaty-making, remove causes of distrust and conflict and contribute to the formation of a clear and indisputable system of international law. While no formal regulations were ever adopted, the Council of the League approved, in 1920, a memorandum by the Secretary-General providing guidelines for registration and publication.[1]

4. The registration and publication of treaties are provided for in the Charter of the United Nations. Article 102 provides that every treaty and international agreement entered into by any Member after the entry into force of the Charter shall as soon as possible be registered with the Secretariat and published by it. It further provides that no party to any such treaty or agreement which has not been registered may invoke that treaty or agreement before any organ of the United Nations.

5. At its first session, the General Assembly instructed the Secretary-General to submit detailed proposals for additional rules for the implementation of Article 102. Following the submission of the relevant report of the Secretary-General, the Assembly, by its resolution 97 (I), adopted the regulations to give effect to Article 102.

6. Since their adoption, the regulations have been amended on three occasions with a view to reflecting changes in treaty-making practice and increasing the efficiency of the registration and publication process.

7. At its fourth session, the General Assembly adopted its resolution 364 B (IV), in which it amended article 4 of the regulations to provide for the registration ex officio of multilateral treaties or agreements where the United Nations was the depositary.

[1] See League of Nations, *Treaty Series*, vol. 1.

8. At its fifth session, the General Assembly adopted its resolution 482 (V), in which it amended articles 7 and 8 of the regulations, respectively removing the requirement that certificates of registration be issued to all parties to the registered treaty (requiring instead that such a certificate be issued to the registering party and to any other party only upon request) and reducing the number of languages in which the register is kept to two (English and French). To assist in the timely publication of the United Nations *Treaty Series*, the Assembly also invited States to provide translations in English or French or both of treaties submitted for registration.

9. At its thirty-third session, the General Assembly adopted its resolution 33/141 A, in which, noting that the number of international agreements had considerably increased in the previous decade and that the delays in registration and publication had increased to the point where the implementation of Article 102 might be seriously jeopardized, it amended article 12 of the regulations to give the Secretariat the option not to publish in extenso certain categories of bilateral treaties (limited publication). The Assembly maintained a dedicated item on the registration and publication of treaties on the agendas of its following three sessions, at which the Secretary-General submitted reports (A/34/466, A/35/423 and A/36/570), as requested by the Assembly, on the implementation of resolution 33/141 and the situation of the *Treaty Series*.

10. In its resolution 39/90, adopted under the agenda item "Review of the multilateral treaty-making process", the General Assembly requested the Secretary-General to examine the regulations with a view to their possible updating. That item, however, was not included in the agenda of the following session.

11. In the 1990s, the Secretariat developed a comprehensive treaty database containing all depositary and registration information and established, for the first time, a system for the electronic dissemination of that information, including the *Treaty Series*. In its resolution 51/158, adopted in the context of the United Nations Decade of International Law, the General Assembly welcomed those initiatives. In resolutions adopted later under the same item,[2] the Assembly reiterated its call for States to provide translations of treaties submitted for registration and encouraged them to provide, where available, copies of the texts of such treaties in electronic format. In addition, the Assembly invited the Secretary-General to apply to multilateral treaties the provisions of article 12, paragraph 2, of the regulations, as amended, on limited publication.

III. Review of the regulations

12. As requested by the General Assembly, the Secretary-General elaborates in the paragraphs below on his review of the regulations.

A. Reaffirming the importance of the registration and publication of treaties

13. Since 1945, more than 70,000 treaties have been registered with the Secretariat. The rate of registration has increased over time, with an average of more than 1,400 treaties registered annually over the past 10 years, representing a 10 per cent increase compared with the previous decade.

[2] Resolutions 52/153, 53/100 and 54/28.

14. The obligation to register treaties has not, however, met with universal compliance. While it is not possible to ascertain the total number of existing treaties since 1945, it is clear that a significant number of treaties in force have not been registered.

15. Furthermore, treaty registration appears to be geographically imbalanced. An analysis of treaties submitted for registration in the past decade shows significant divergences in the number submitted by States from different regional groups. This imbalance may be due to several factors, including limited awareness of the obligation to register or a lack of resources for the submission of treaties for registration.

16. The Treaty Section has undertaken several activities aimed at supporting Member States in meeting their obligation under Article 102, including the organization of workshops at United Nations Headquarters and at the regional level, and the dissemination of legal publications, such as the *Treaty Handbook*. These have proved to be effective tools for promoting a wider understanding of the registration and publication process.

17. In the light of the considerations set out above, the General Assembly may wish to reaffirm the importance of the registration and publication of treaties and emphasize the obligation of Member States under Article 102. The Assembly may also wish to consider additional measures that could be undertaken to address the current shortcomings in treaty registration, through capacity-building, publications or technical assistance.

B. Reviewing the substantive conditions for registration (article 1)

18. Article 1, paragraph 1, of the regulations provides that every treaty or international agreement, whatever its form and descriptive name, entered into by one or more Members of the United Nations shall be registered with the Secretariat.

19. At the first session of the General Assembly, the Sixth Committee considered defining in greater detail the categories of treaties and international agreements subject to registration but ultimately resolved to retain the general terms of Article 102, with the addition of the words "whatever its form and descriptive name".

20. In considering whether a submitted agreement should be registered, the Secretariat bases its position, in addition to the provisions of Article 102 of the Charter and article 1 of the regulations, on the accepted definition of the term "treaty" under international law as reflected in article 2, paragraph 1 (a), of the Vienna Convention on the Law of Treaties, while also taking into account the views expressed by the Sixth Committee.

21. Through the consistent application of the regulations as outlined above, a significant body of practice has emerged among States and within the Secretariat, leading to a stable and common understanding of the instruments considered registrable in accordance with Article 102.

22. The comprehensive body of registered treaties, made available both in the *Treaty Series* and online, provides a unique resource for appraising the evolving treaty-making practice in the international community. It shows, for example, different approaches among Member States regarding the treaty-making capacity of international organizations or the legal status of certain categories of agreements (such as memorandums of understanding or inter-institutional arrangements).

23. While a modification of the definition of a treaty or international agreement set out in article 1, paragraph 1, of the regulations is not needed, the General

Assembly may wish to consider whether the present review could provide an opportunity for an exchange of views among States regarding their treaty-making practice as reflected in the registration of treaties. The Assembly may also wish to consider how to take advantage of the registration information made available by the Treaty Section for the purposes of conducting analytical studies of that treaty-making practice.

C. Recognizing the role of depositaries other than the United Nations (article 1, paragraph 3, and article 4)

24. Article 1, paragraph 3, of the regulations provides that registration may be effected by any party to a treaty. Article 4, paragraph 1, provides that, where the United Nations is a party to a treaty, has been authorized by a treaty to effect registration or is the depositary of a multilateral treaty, the treaty must be registered ex officio by the United Nations.

25. No provision in the regulations refers to the registration of multilateral treaties by other depositaries. This matter was discussed by the Sixth Committee at the second and third sessions of the General Assembly. The Secretariat had suggested that it would be desirable for multilateral treaties to be submitted for registration by the Government having custody of the original document, which would also be responsible for registering subsequent actions. The Secretariat noted that that would prevent duplication of efforts on the part of States parties to the treaty. The Committee concurred with that proposal and took note of the desirability of following such a procedure.[3] However, the regulations were not revised accordingly.

26. In accordance with the views expressed in the Sixth Committee, the established practice is that a multilateral treaty and any subsequent actions effected in relation to it should be registered by the depositary.[4] This practice extends to multilateral treaties deposited with an intergovernmental organization or its chief administrative officer. It follows that, when a multilateral treaty with a designated depositary is submitted for registration by one of its parties, the Secretariat will decline registration and request that the treaty be submitted by the depositary.

27. This practice is reflected in the Vienna Convention on the Law of Treaties. Its article 77, paragraph 1 (g), provides for the registration of a treaty with the Secretariat of the United Nations as a depositary function. Article 80, paragraph 2, provides that the designation of a depositary shall constitute authorization for it to effect registration.

28. In order to reflect this practice and the current law of treaties, the General Assembly may wish to consider amending article 4 of the regulations so as to provide for the registration of multilateral treaties by the depositary.

D. Clarifying and simplifying the procedural requirements for registration (article 5)

29. Article 5 of the regulations is aimed at defining the procedural requirements for the submission of treaties for registration. It provides that the entity registering a treaty shall certify that the text is a true and complete copy thereof and includes all reservations made by the parties thereto. It also states that the certified copy shall

[3] See A/457; *Official Records of the Third Session of the General Assembly, Part I, Plenary Meetings of the General Assembly*, A/698.

[4] *Repertory of Practice of United Nations Organs, Supplement No. 5, vol. V, Articles 92-111 of the Charter* (United Nations publication, Sales No. E.86.V.7), art. 102.

reproduce the text in all the languages in which the treaty was concluded and shall be accompanied by two additional copies and by a statement setting forth the date and the method of its entry into force.

30. This provision does not accurately reflect the requirements for registration in current practice. As indicated in the *Treaty Handbook* and the official resources made available online, a certifying statement shall indicate, in addition to the information above, the title of the treaty, a list of its authentic texts, and the date and place of conclusion. The registration of the treaty requires that the certified copy provided include all annexes or attachments constituting an integral part of the treaty.[5] In the case of multilateral treaties, additional information is needed, namely, a list of all parties to the treaty, with indication of the date of deposit of their respective instruments of consent to be bound, the nature of those instruments (ratification, accession, acceptance, etc.), the date of entry into force of the treaty for each party and the text of any reservations or declarations.

31. As noted above, to facilitate the implementation of Article 102, the General Assembly has encouraged States to provide, where available, copies in electronic format of the texts of treaties submitted for registration, as well as courtesy translations in English or French or both. Consequently, the Secretariat today requires only one certified true copy of a treaty in paper form, but requests that an additional copy be provided in electronic format. The Secretariat also requests courtesy translations, if available, which are essential to speed up the registration process and ensure the timely publication of the *Treaty Series*. However, courtesy translations are rarely received, which often has an impact on the amount of time needed for registration and publication.

32. In the light of the considerations set out above, the Assembly may wish to reiterate its call for Member States to consider providing, where available, translations in English or French or both of treaties submitted for registration. The Assembly may also wish to amend article 5 of the Regulations to reflect the current practice, as described above, thus providing reliable guidelines to States in the registration process.

E. Facilitating the further use of electronic resources in the registration process (article 9)

33. Article 9 of the regulations provides that certified extracts from the register shall be issued at the request of any Member State or party to the treaty. Its original objective was to ensure that Member States could have access to information contained in the register.

34. This is one of several provisions in the regulations that have become outdated as a result of the increased use of information technology (IT). Modern IT tools have revolutionized this area of work. Today, the Treaty Section handles the entire registration and publication process electronically with its customized Treaty Information and Publication System. The United Nations Treaty Collection[6] provides comprehensive information on registered treaties, made available in real time both to Member States and to the general public. Electronic tools are also offered to enable users to search for information in the complete database of registered treaties.

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[5] *Repertory of Practice of United Nations Organs, Supplement No. 6, vol. VI, Articles 92-111 of the Charter* (United Nations publication, Sales No. E.86.V.6), art. 102.

[6] See https://treaties.un.org.

35. IT has therefore become an essential instrument in achieving the goals of Article 102. It has promoted efficiencies and allowed the prompt and wide dissemination of registration information, which renders obsolete certain formal requirements provided for in the regulations. It also offers further potential efficiencies that could be explored with a more streamlined registration and publication process and adequate resources.

36. In recent years, the General Assembly has repeatedly welcomed the efforts made to develop and enhance the electronic treaty database and encouraged the continuation of such efforts, while bearing in mind that many developing countries lack affordable access to information and communication technologies.[7]

37. In the light of the considerations set out above, the General Assembly may wish to consider amending article 9 to affirm the principle of the public accessibility of the register. It may also wish to reaffirm, in a resolution, its support for the electronic treaty database as an essential tool in the achievement of the goals of Article 102, and explore avenues for its further development and enhancement.

F. Considering whether the current publication policy meets the needs of Member States (article 12)

38. Article 12, paragraph 1, of the regulations provides that the Secretariat shall publish as soon as possible in a single series every treaty or international agreement which is registered or filed and recorded, in the original languages, followed by a translation in English and French. Paragraph 2 lists specific categories of treaties which the Secretariat has the option not to publish in extenso (limited publication), and paragraph 3 indicates that such a decision shall be made taking into account, inter alia, the practical value that might accrue from in extenso publication. Under paragraph 4, treaties subject to limited publication shall be made available to any State or international organization upon request, as well as to private persons against payment. Paragraph 5 identifies the information that shall be included in the series.

39. These provisions are implemented through the continuous publication of the United Nations *Treaty Series*, which contains the full texts, in all authentic languages, of treaties registered or filed and deposited, as well as translations in English and French. With respect to a treaty subject to limited publication, the series omits its text, but indicates its full title in English and French, as well as information on the parties, date and mode of entry into force and authentic texts, as well as the number and date of registration and the registering entity.

40. It follows that the *Treaty Series* is probably the most multilingual publication of the United Nations, containing the texts of treaties in an estimated 100 languages.

41. The requirement that the full texts of all published treaties be translated into English and French imposes a heavy burden on the Secretariat and has historically been the main cause for delays in the publication of the *Treaty Series*. As early as in the era of the League of Nations, the Secretariat drew the attention of Member States to the backlog caused by the need to translate treaties, and it has expressed the same concern to the General Assembly on several occasions since, for example, in the 1950s, the 1970s and the 1990s. The translation of treaties, which is handled by the Department for General Assembly and Conference Management, is a delicate, time-consuming and expensive endeavour that often requires the use of external contractors (in particular when a treaty is not in one of the official

[7] See resolutions 70/118, para. 8 (c), and 71/148, para. 8 (c).

languages of the United Nations). Significant amounts of time and resources are also employed to review the accuracy of translations with a view to their publication.

42. The backlog in the publication of the *Treaty Series* is therefore a systemic issue that persists today. While there is currently no backlog in registration (which is usually effected in the month that follows the submission of a treaty), the *Treaty Series* continues to experience a backlog, owing largely to delays in translation. As of April 2017, the latest available printed volume of the *Treaty Series* corresponded to treaties registered in January 2012; approximately 862 requests for translation were pending completion, corresponding to an estimated 16,651 pages of translations to be published in the *Treaty Series*.

43. In the past, Member States have indicated that an interval of one year between registration and publication is generally considered reasonable.[8] As indicated above, the General Assembly has occasionally adopted measures to alleviate the burden of translation, such as the limited publication policy or the call for States to provide courtesy translations, which have had varying results. In any event, the increase in the number of registered treaties imposes additional pressure on the limited resources of the Secretariat.

44. In the light of the considerations set out above, the General Assembly may wish to consider which means would be most effective in ensuring the timely publication of the *Treaty Series*. The Assembly may wish to examine, for example, whether the requirement that all published treaties be translated into English and French meets the current needs of Member States and justifies the resources devoted to it. The Assembly may choose to remove the requirement or consider alternative measures, such as the publication of translations only when they have been provided by the registering entity. The Assembly may also wish to consider broadening the limited publication policy so as not to publish in extenso wider categories of treaties or treaties that are publicly available in other authoritative sources (for example, those maintained by other international organizations).

G. Modernizing the methods for disseminating information on registered treaties (articles 13 and 14)

45. Article 13 of the regulations provides that the Secretariat shall publish every month a statement of the treaties and international agreements registered, or filed and recorded, during the preceding month, giving the dates and numbers of registration and recording. Article 14 instructs the Secretariat to send the *Treaty Series* and the statement to all Member States.

46. Pursuant to article 13, the Treaty Section publishes a statement of treaties and international agreements registered or filed and recorded with the Secretariat every month. The monthly statement used to be printed and circulated in hard copy. Since 1 April 2010,[9] in an effort to reduce paper consumption and conserve energy and resources, the paper distribution has been discontinued and the monthly statement has been made available only in electronic format on the website of the United Nations Treaty Collection and circulated through the website's automated subscription services. Nevertheless, the preparation of the monthly statement requires the use of significant time and resources.

[8] See resolution 32/144, fifth preambular para.

[9] See United Nations, note verbale No. LA 41 TR/230/Registration and Publication Requirements/2010, 3 February 2010.

47. The original purpose of the monthly statement was to provide Member States with information on registered treaties pending the publication of the *Treaty Series*. Today, however, the relevant information (including the title of the treaty, the date of conclusion, parties, submitter, etc.) is promptly made available on the Treaty Collection website at the time of registration.

48. Hard copies of the *Treaty Series* are circulated to all permanent missions at Headquarters and printed on demand. However, the complete collection of the *Treaty Series* is also available on the website, which offers a variety of electronic search tools to enable users to find information. Given the delays in the publication of the *Treaty Series*, the Treaty Section has taken the initiative of also making available on its website, promptly after registration, copies in electronic format of the full texts of registered treaties in all authentic languages, as they were submitted by the registering entity.

49. It follows that the specific requirements of articles 13 and 14 have lost their purpose in the modern environment. The General Assembly may wish to consider amending those provisions to remove formal requirements that may not be needed (for example, discontinuing the monthly statement) and recognize the role of information technology in achieving the essential principle of the publication of registration information.